



Date Mailed: March 17, 2025

Docket No.: 25-002911

Case No.: [REDACTED]

Petitioner: [REDACTED]

[REDACTED]
MI [REDACTED]

This is an important legal document. Please have someone translate the document.

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এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

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DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a request for hearing filed by Petitioner [REDACTED] (Petitioner).

After due notice, a telephone hearing was held on March 5, 2025. Petitioner appeared and testified on her own behalf. [REDACTED] Petitioner's son, also testified as a witness for Petitioner. Nancy Scott, Clinical Supervisor, appeared and testified on behalf of Respondent Easterseals MORC (Respondent). Nicole LaFever, Service Support Specialist, also testified as a witness for Respondent.

During the hearing, Petitioner's request for hearing was admitted into the record without objection as Exhibit #1. Respondent also submitted documents that were admitted into the record without objection as Exhibits A-D. No other proposed exhibits were submitted.

ISSUE

Did the Respondent properly place Petitioner on a waiting list for the MI Choice Waiver Program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent is a contract agent of the Michigan Department of Health and Human Services and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services in its service area.
2. Petitioner was previously enrolled as a waiver participant with Respondent, but her case was closed in July of 2024 due to issues with her son not being allowed to be her paid caregiver. (Testimony of Service Support Specialist).
3. Petitioner did not appeal that case closure. (Testimony of Petitioner's son).
4. Her son has continued to provide any necessary care informally as a natural support. (Testimony of Petitioner's son).
5. Petitioner subsequently reapplied for waiver services through Respondent, and, on October 29, 2024, a telephone intake was completed with Petitioner's son. (Exhibit C, pages 1-10).
6. During the intake assessment, Petitioner was determined to be potentially eligible for the waiver program. (Exhibit C, pages 1-10).
7. However, while found to be potentially eligible, Petitioner was placed on a waiting list due to a lack of available slots in the program. (Exhibit B, page 1).
8. On October 29, 2024, Respondent sent Petitioner written notice that she had been placed on the waiting list. (Exhibit A, page 1).
9. On January 22, 2025, MOAHR received the request for hearing filed in this matter. (Exhibit #1, page 1).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Petitioner is seeking services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid (formerly

HCFA) to the Department. Regional agencies, in this case Respondent, function as the Department's administrative agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440 and subpart G of part 441 of this chapter.

42 CFR 430.25(b)

The Medicaid Provider Manual (MPM) outlines the approved evaluation and the MI Choice waiting list policies:

3.2 MI CHOICE INTAKE GUIDELINES

The MI Choice Intake Guidelines (MIG) is a list of questions designed to screen applicants for eligibility and further assessment. Additional probative questions are permissible when needed to clarify eligibility. The MIG does not, in itself, establish program eligibility. A properly completed MIG is mandatory for MI Choice waiver agencies prior to placing applicants on a MI Choice waiting list when the waiver agency is operating at its capacity. Individuals who score as Level C, Level D, Level D1 or Level E are those applicants determined potentially eligible for program enrollment and will be placed on the waiver agency's MI Choice waiting list. The date of the MIG contact establishes the chronological placement of the applicant on the waiting list. The MIG may be found on the MDHHS website. (Refer to the Directory Appendix for website information.)

When the waiver agency is at capacity, applicants requesting enrollment in MI Choice must either be screened by telephone or in person using the MIG at the time of their request for proper placement on the waiting list. If a caller is seeking services for another individual, the waiver agency will either contact the applicant for whom services are being requested or complete the MIG to the extent possible using information known to the caller.

For applicants who are deaf, hearing impaired, or otherwise unable to participate in a telephone interview, the waiver agency must use the applicant's preferred means of communication. It is acceptable to use an interpreter, a third-party in the interview, or assistive technology to facilitate the exchange of information.

As a rule, nursing facility residents who are seeking to transition into MI Choice are not contacted by telephone but rather are interviewed in the nursing facility. For the purposes of establishing a point of reference for the waiting list, the date of the initial nursing facility visit (introductory interview) shall be considered the same as conducting a MIG, so long as the functional objectives of the MIG are met.

(Refer to the Waiting Lists subsection of this chapter for additional information.) Specifically, the introductory meeting must establish a reasonable expectation that the applicant will meet the functional and financial eligibility requirements of the MI Choice program within the next 60 days.

Applicants who are expected to be ineligible based on MIG information may request a face-to-face evaluation using the LOCD and financial eligibility criteria. Such evaluations should be conducted as soon as possible, but must be done within 10 business days of the date the MI Choice Intake Guidelines was administered. MI Choice waiver agencies must issue an adverse action notice advising applicants of any and all appeal rights when the applicant appears ineligible either through the MIG or a face-to-face evaluation.

When an applicant appears to be functionally eligible based on the MIG but is not expected to meet the financial eligibility requirements, the MI Choice waiver agency must place the applicant on the waiting list if it is anticipated that the applicant will become financially eligible within 60 days.

The MIG is the only recognized tool accepted for telephonic screening of MI Choice applicants and is only accessible to MI Choice waiver agencies. It is not intended to be used for any other purpose within the MI Choice program, nor any other Medicaid program. MI Choice waiver agencies must collect MI Choice Intake Guidelines data electronically using software through the MDHHS contracted vendor.

3.3 ENROLLMENT CAPACITY

MI Choice capacity is limited to a maximum number of participants served at any point in the fiscal year as specified in the approved waiver application. Waiver agencies are allocated a specific number of slots each fiscal year and are responsible for managing enrollment so as not to exceed the maximum number of participants served at any point in the fiscal year. MDHHS reserves the right to reallocate slots as necessary to best meet MI Choice program demands.

3.4 WAITING LISTS

Whenever the number of participants receiving services through MI Choice exceeds the existing program capacity, any screened applicant must be placed on the MI Choice waiting list. The waiting list must be actively maintained and managed by each MI Choice waiver agency. The enrollment process for the MI Choice program is not ever actually or constructively closed. The applicant's place on the waiting list is determined by priority category in the order described below. Within each category, an applicant is placed on the list in chronological order based on the date of their request for services. This is the only approved method of accessing waiver services when the waiver program is at capacity.

3.4.A. PRIORITY CATEGORIES

Applicants will be placed on the waiting list by priority category and then chronologically by date of request of services. Enrollment in MI Choice is assigned on a first-come/first-served basis using the following categories, listed in order of priority given. Waiver agencies are required to conduct follow-up phone calls to all applicants on the waiting list. The calls are to determine the applicant's status, offer assistance in accessing alternative services, identify applicants who should be removed from the list, and identify applicants who might be in crisis or at imminent risk of admission to a nursing facility. Each applicant on the waiting list is to be contacted at least once every 90 days. Applicants in crisis or at risk require more frequent contacts. Each waiver agency is required to maintain a record of these follow-up contacts.

3.4.A.1. STATE PLAN PRIVATE DUTY NURSING AGE EXPIRATIONS

This category includes only those applicants who continue to require Private Duty Nursing services at the time such coverage ends due to age restrictions.

3.4.A.2. NURSING FACILITY TRANSITIONS

Nursing facility residents who desire to transition to the community and will otherwise meet enrollment requirements for MI Choice qualify for this priority status. Priority status is not given to applicants whose service and support needs can be fully met by existing State Plan services.

3.4.A.3. ADULT PROTECTIVE SERVICES (APS) AND DIVERSIONS

An applicant with an active Adult Protective Services (APS) case is given priority when critical needs can be addressed by MI Choice services. It is not expected that MI Choice waiver agencies solicit APS cases, but priority is given when necessary.

An applicant is eligible for diversion priority if they are living in the community or are being released from an acute care setting and are found to be at imminent risk of nursing facility admission. Imminent risk of placement in a nursing facility is determined using the Imminent Risk Assessment (IRA), an evaluation developed by MDHHS. Use of the IRA is essential in providing an objective differentiation between those applicants at risk of a nursing facility placement and those at imminent risk of such a placement. Only applicants found to meet the standard of imminent risk are given priority status on the waiting list. Applicants may request that a subsequent IRA be performed upon a change of condition or circumstance.

Supports coordinators must administer the IRA in person. The design of the tool makes telephone contact insufficient to make a valid determination. Waiver agencies must submit a request for diversion status for an applicant to MDHHS. (Refer to the Directory Appendix

for details.) A final approval of a diversion request is made by MDHHS.

3.4.A.4. CHRONOLOGICAL ORDER BY SERVICE REQUEST DATE

This category includes applicants who do not meet any of the above priority categories or for whom prioritizing information is not known. As stated, applicants will be placed on the waiting list in the chronological order that they requested services as documented by the date of MIG completion or the initial nursing facility introductory meeting.

*MPM, October 1, 2024 version
MI Choice Waiver Chapter, pages 7-9
(italics added for emphasis)*

Here, Respondent's representative testified that it was at capacity for MI Choice waiver enrollees at the time of the decision at issue in this case, and that it therefore placed Petitioner on its waiting list in chronological order pursuant to the above policies.

In response, Petitioner did not directly dispute that determination, and instead, described her disagreement with the closure of her previous case with Respondent in July of 2024. Her son also confirmed that they had not previously appealed that case closure, and that he has continued to care for Petitioner as a natural support.

Given the above policies and record, the undersigned ALJ finds that Respondent's actions must be affirmed. In doing so, he would also note that this case is limited to reviewing Petitioner's placement on the waiting list as the time for appealing any case closure in July of 2024 has long since passed.

Pursuant to the above policies, Respondent maintains a waiting list when it is at capacity and it contacts individuals on the list on a priority and first come, first served, basis when sufficient resources become available to serve additional individuals.

Accordingly, given the undisputed evidence that Petitioner appears to be functionally eligible for the program, but that Respondent is currently at capacity, Respondent properly placed Petitioner on the waiting list. Moreover, given the information provided during the intake assessment, Respondent also properly found that Petitioner did not qualify for a priority category and that she should be placed on the waiting list in the chronological order that she requested services.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly placed Petitioner on a waiting list for the MI Choice Waiver Program.

IT IS THEREFORE ORDERED that:

Respondent's decision is **AFFIRMED**.

Steven Kibit

SK/sj

Steven Kibit
Administrative Law Judge

APPEAL RIGHTS: Petitioner may appeal this Hearing Decision to the circuit court. Rules for appeals to the circuit court can be found in the Michigan Court Rules (MCR), including MCR 7.101 to MCR 7.123, available at the Michigan Courts website at courts.michigan.gov. The Michigan Office of Administrative Hearings and Rules (MOAHR) cannot provide legal advice, but assistance may be available through the State Bar of Michigan at <https://lrs.michbar.org> or Michigan Legal Help at <https://michiganlegalhelp.org>. A copy of the circuit court appeal should be sent to MOAHR. A circuit court appeal may result in a reversal of the Hearing Decision.

Either party who disagrees with this Hearing Decision may also send a written request for a rehearing and/or reconsideration to MOAHR within 30 days of the mailing date of this Hearing Decision. The request should include Petitioner's name, the docket number from page 1 of this Hearing Decision, an explanation of the specific reasons for the request, and any documents supporting the request. The request should be sent to MOAHR

- by email to LARA-MOAHR-DCH@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Documents sent via email are not secure and can be faxed or mailed to avoid any potential risks. Requests MOAHR receives more than 30 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 17th day of March 2025.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

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